

STATE OF MICHIGAN
COURT OF APPEALS

In re RICHARDSON, Minors.

UNPUBLISHED
December 8, 2015

No. 327048; 327050
Wayne Circuit Court
Family Division
LC No. 95-327607-NA

Before: RONAYNE KRAUSE, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

Respondents S. Richardson and M. Costner each appeal by right the trial court's order terminating their parental rights to the minor children. The court terminated Richardson's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), and terminated Costner's parental rights pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), (h), (i), (j), and (l). We affirm.

I. DOCKET NO. 327048

Respondent Richardson argues that the trial court erred in finding that a statutory ground for termination was established by clear and convincing evidence and in finding that termination of his parental rights was in the children's best interests. We disagree.

A. STATUTORY GROUNDS

The petitioner has the burden of establishing a statutory ground for termination in MCL 712A.19b(3) by clear and convincing evidence. MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). We review the trial court's decision for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). "[T]his Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005); MCR 2.613(C).

The trial court found that clear and convincing evidence supported termination of Richardson's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which permit termination under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Richardson was adjudicated a respondent pursuant to his admissions of domestic violence against Costner, and the recent eviction of his family. Richardson's lack of suitable housing was a significant issue throughout the five-year period of these proceedings. He had a history of residing in homes that were dirty, cluttered, lacking in utilities, and in need of major repairs. Richardson also had a history of being evicted from his homes. Richardson's inability to establish stable and suitable housing was partly caused by the limited availability of affordable housing for a family of four supported by his limited disability benefits, but he did not make progress toward supplementing his income through employment. Richardson's therapist testified that he visited Richardson's most recent home two weeks before the hearing and, although it appeared to be adequate, it lacked beds and necessary appliances. In view of Richardson's history, testimony that he recently acquired housing that would be suitable if he had adequate furniture and appliances does not undermine the trial court's finding Richardson failed to resolve this barrier to reunification. Petitioner also presented evidence that Richardson failed to benefit from domestic violence counseling. After completing the counseling requirement, Richardson was involved in another domestic violence incident with his live-together-partner. He did not follow up with a referral to repeat domestic violence counseling. Accordingly, termination under § 19b(3)(c)(i) was not clearly erroneous.

In addition to inadequate housing, petitioner presented evidence that Richardson failed to provide adequate care for his children during the five-month period when they were returned to his care from August 2012 to January 2013. In addition to the poor physical condition of the home, the children suffered from inadequate food, poor hygiene, and dirty clothing. Richardson failed to comply with the eldest child's therapy and medication needs. Consequently, this child's behavior and school performance deteriorated. After the children were removed from his home,

Richardson's attendance of visitation was sporadic. When he attended visitation, he sometimes slept, and he did not demonstrate adequate parenting skills. Richardson was given ample time to rectify these problems, but never succeeded in eliminating these barriers to reunification. This evidence supports termination under § 19b(3)(g).

With respect to § 19b(3)(j), Richardson argues that there was no evidence that he ever harmed the children while they were in his care. Termination is warranted under § 19b(3)(j) when there is "a reasonable likelihood based on the conduct *or capacity* of the child's parent, that the child *will be harmed* if he or she is returned to the home of the parent." There was evidence that Richardson frequently allowed inappropriate visitors into his home, and that one child was sexually abused while in Richardson's care. Richardson's failure to comply with another child's therapy and medication needs led to behavioral problems and a decline in the child's school performance. Evidence that Richardson lacked the capacity to provide a safe, structured home was sufficient to support termination under § 19b(3)(j).

B. BEST INTERESTS

Richardson argues that termination of his parental rights was not in the children's best interests. Once a statutory ground for termination has been established, the court shall order termination of parental rights if it finds by a preponderance of the evidence "that termination of parental rights is in the child's best interests." *In re White*, 303 Mich App 703, 713; 846 NW2d 61 (2014); MCL 712A.19b(5). The trial court's best interest decision is also reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357.

Several witnesses testified that the children and Richardson were strongly bonded with each other. However, the children suffered from neglect when they were returned to his care from August 2012 to January 2013. The children attended school hungry, with poor hygiene, and dirty clothes. Witnesses who observed visitation testified that Richardson did not actively engage with his children, and that the children treated him as if he were their peer. Richardson's visitation sharply declined in 2013 and 2014. The children needed a structured home life, consistent care for their mental health problems, and positive adult guidance. These needs were at least partly met in their foster homes, but not in their home with Richardson. Under these circumstances, the trial court did not clearly err in finding that termination of Richardson's parental rights was in the children's best interests.

II. DOCKET NO. 327050

In her sole issue on appeal, respondent Costner argues that the trial court clearly erred in finding that termination of her parental rights was in the children's best interests. We disagree. Throughout these proceedings, Costner exhibited minimal effort in working toward reunification. She was referred for therapy several times before she attended. Her visitation record was poor. She attended only 23 of 52 visits in 2013, and only 2 of 28 visits in 2014. Any bond between her and her children was gone by the time of the termination hearing. The children did not inquire about her status or show any interest in reuniting with her. Costner never established stable housing and was incarcerated in Kentucky at the time of the termination hearing. The children's need for structure, stability, and consistent treatment for their mental health needs falls far short of Costner's conscientiousness in parenting them. Accordingly, the trial court did not clearly err

in finding that termination of Costner's parental rights was in the children's best interests. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357.

We affirm.

/s/ Amy Ronayne Krause

/s/ Jane E. Markey

/s/ Michael J. Kelly